

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ISIAH PIERCE and
LARRY WILLIS,

Defendants.

ORDER
17-CR-32(LJV)

Defendants Isiah Pierce and Larry Willis are charged in Count 1 of a twelve-count Superseding Indictment with conspiracy: (a) to possess with intent to distribute, and to distribute, 100 grams or more of a mixture and substance containing heroin and butyryl fentanyl ; (b) to possess with intent to distribute, and to distribute, 28 grams or more of a mixture or substance containing cocaine base; (c) to possess with intent to distribute, and to distribute, a quantity of cocaine; (d) to possess with intent to distribute, and to distribute, 40 grams or more of a mixture and substance containing N-phenyl-N-[1-(2-phenyl-ethyl)-4-piperidinyl] propanamide (fentanyl); and (e) to use and maintain 70 Henrietta Avenue, Buffalo, New York, for the purpose of manufacturing, distributing, and using heroin and butyryl fentanyl, N-phenyl-N-[1-(2-phenyl-ethyl)-4-piperidinyl] propanamide (fentanyl), cocaine, and cocaine base. Docket Item 32. Counts 2-5 charge the defendants with the possessing of certain narcotics on or about December 1, 2016, at 70 Henrietta Avenue, Buffalo, New York. *Id.* Count 6 charges the defendants with maintaining 70 Henrietta Avenue, Buffalo, New York, as a drug-involved premises. *Id.* Count 7 charges the defendants with possessing firearms in furtherance of drug trafficking crimes. *Id.* In Counts 8 and 9, defendants Isiah Pierce and Larry Willis are

each charged, respectively, with possessing six different firearms and various rounds of ammunition. *Id.* Counts 10 and 11 charge defendant Larry Willis with possessing quantities of heroin and cocaine base, respectively, with intent to distribute these drugs. *Id.* Finally, in Count 12, defendant Isiah Pierce is charged with possessing a quantity of cocaine base, with intent to distribute it. *Id.*

On February 9, 2017, this case was referred to Magistrate Judge Jeremiah J. McCarthy, Docket Item 17, and on April 17, 2017, Pierce, joined by Willis, moved for, among other things, the identification of informants and the suppression of physical evidence.¹ Docket Items 28 and 29. On July 7, 2017, Judge McCarthy issued a Report and Recommendation, recommending the denial of the defendants' motions seeking the identity of informants and to suppress physical evidence. Docket Item 38. Specifically, Judge McCarthy found that with respect to the defendants' request for the identity of informants, the defendants failed to make the required particularized showing of need. *Id.* at 2. Similarly, with respect to the defendants' motion to suppress physical evidence, Judge McCarthy found that the defendants had failed to show that they were entitled to a hearing because they failed to submit affidavits of personal knowledge demonstrating that they had a reasonable expectation of privacy in 70 Henrietta Avenue, Buffalo, New York. *Id.* at 4-5. Moreover, Judge McCarthy further found that the defendants' assertion that they were "located at 70 Henrietta at the time of the

¹ As stated in Judge McCarthy's Report and Recommendation, the motion before the Court was defendant Pierce's Omnibus Motion, which had been joined by defendant Willis. During oral argument before Judge McCarthy, counsel for the defendants "confirmed that with the exception of their requests for identification of informants and suppression of physical evidence, the remainder of their motions have been resolved." Docket Item 38. Accordingly, only those requests were addressed in the Report and Recommendation.

search, absent any explanation of how or why they were located at the premises, fail to demonstrate the reasonable expectation of privacy necessary to establish standing.” *Id.* at 4.

Neither defendant objected to Judge McCarthy’s Report and Recommendation, and the time to file objections now has expired. For that reason, the defendants have waived their right to have this Court review the Report and Recommendation. See Fed. R. Crim. P. 59(b)(2) (“Failure to object in accordance with this rule waives a party’s right to review.”); see *also* Docket Item 38 at 5. Nevertheless, in its discretion, this Court has carefully reviewed Judge McCarthy’s Report and Recommendation (Docket Item 38). Based on that review and the absence of any objection, and for the reasons stated in the Report and Recommendation, this Court adopts the Report and Recommendation in its entirety. Pierce’s motion seeking the identity of informants and to suppress physical evidence, joined in by Willis, is DENIED.

IT IS SO ORDERED.

Dated: August 17, 2017
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE